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C O N F I D E N T I A L SECTION 01 OF 04 COLOMBO 001580

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E.O. 12958: DECL 09/27/2016

TAGS: [PGOV PHUM CE](#)

SUBJECT: SRI LANKA'S HUMAN RIGHTS CHALLENGES AND IDEAS
FOR STRENGTHENING SRI LANKA'S HUMAN RIGHTS CAPACITY

Ref A. COLOMBO 1549, B. COLOMBO 1543, C. COLOMBO 1540,
[D. COLOMBO 553](#)

Classified By: AMBASSADOR ROBERT O. BLAKE, JR. FOR
REASONS 1.4 (b) and (d)

[1](#)1. (C) Summary: Several recent high profile human rights abuse cases in Sri Lanka cases have raised international concerns and underlined the current absence of strong indigenous Sri Lankan institutions to investigate these abuses and pressure the Sri Lankan judicial system to ensure credible prosecution and punishment of offenders. Thanks in part to steady pressure from the United States, President Rajapaksa has agreed to constitute a Human Rights Mission with the participation of international observers to investigate key recent abuses and make appropriate recommendations. Septel describes Ambassador's September 26 meeting with Co-Chair Ambassadors on this subject. This cable analyses what the US should be prepared to recommend to the Human Rights Mission to strengthen Sri Lanka's own independent capacity, once the internationally-supported mission has completed its task. Sri Lanka's relatively new Human Rights Ministry does not have an investigative mandate and has not been able to fully address human rights concerns either, despite strong leadership from its Minister. The US and the international community can help strengthen Sri Lanka's human rights record by urging the president to permit the Constitutional Council to appoint new, independent heads of independent commissions (including especially the toothless Human Rights Commission), funding improved capacity for the Human Rights Commission, and strengthening basic law and order capacity within Sri Lanka. End Summary

HUMAN RIGHTS ABUSES: A CULTURE OF IMPUNITY

[1](#)2. (SBU) In recent months, a number of high profile human rights abuses have dominated the headlines in Sri Lanka, including a June 17 paramilitary unit

grenade attack on civilians sheltered in a Mannar church, the August 5 killings of 17 aid workers in Muttur, the August 14 aerial bombardment of a facility housing youth in Mullaitivu, and the September 19 machete-inflicted deaths of 11 Muslim workers in Ampara. Both the Government of Sri Lanka (GSL) and the Liberation Tigers of Tamil Eelam (LTTE) publicly accuse the other side of perpetrating atrocities and using abuse allegations for propaganda. The truth often remains murky because security concerns and a lack of access to sites of incidents make independent investigations difficult at best. Exacerbating the problem, Sri Lanka's Human Rights Commission (HRC) has not functioned effectively since the previous chairperson left her post in March. The end result is the public perception that a culture of impunity exists and that many human rights abuses go uninvestigated and unpunished.

13. (C) In a September 22 meeting with the DCM, Asia Foundation Country Representative Nilan Fernando (protect) said virtually no one has been convicted (and imprisoned) for human rights violations in Sri Lanka in the last two decades. He commented, "The culture of impunity is the most depressing thing about Sri Lanka." Bhavani Fonseka (protect), a program officer at the NGO Center for Policy Alternatives, echoed that view in a September 25 conversation with poloff. Fonseka said the government had a "trend of appointing commissions and asking for international human rights observers," yet failing to follow through on investigations or publicize findings. She said the

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government has used delaying tactics, such as changing the jurisdiction of a case, as happened with the Muttur NGO worker killings. "The culture of impunity is getting worse. Armed actors go free," Fonseka said.

THE HUMAN RIGHTS COMMISSION FAILS TO
ADDRESS THE PROBLEMS

4.(C) The HRC's current chairperson, presidential appointee Justice P. Ramanathan, took office May 23, after the chair position had been vacant for just under two months. Ramanathan replaced Radhika Coomaraswamy, a dynamic and highly respected human rights advocate who joined the UN as Special Representative on Children and Armed Conflict. Coomaraswamy, who had been appointed by the Constitutional Council, served as HRC Chair from May 2003 to March 2006. Under her leadership, the HRC effectively investigated numerous complaints and provided periodic reports on the state of human rights protection in Sri Lanka. According to the Asia Foundation's Fernando, although no prosecutions were conducted under Coomaraswamy's tenure, the Commission had a reputation for independence under her leadership.

15. (C) By contrast, the HRC currently suffers from a clear lack of public confidence, and many perceive the new chairman as too closely tied to the government. Some potential appointees to the HRC refused the posts because they did not believe Ramanathan had an appropriate mandate. The CPA has stated that the current HRC has no legal standing because President Rajapaksa appointed Ramanathan chairperson in violation of the constitution. In a September 22 phone conversation with poloff, Sonali Dayaratne, a UNDP official seconded to the Human Rights Ministry, said several donors had pulled funding from the HRC, citing the Commission's lack of legitimacy as the

cause.

¶6. (C) In a September 22 meeting with poloff, T. Suntheralingam, Special Rapporteur for the HRC, former HRC member, and former High Court Judge, assessed current HRC Chair Ramanathan as well-intentioned, but ineffectual. Suntheralingam said that when Ramanathan was asked why he accepted the position in violation of the constitution, he replied that he could not refuse the President's wishes. Suntheralingam also accused HRC Director of Investigations (and Additional Secretary) Nimal Punchihewa, of corruption. According

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to Suntheralingam, a third HRC member, former High Court Judge M. Tillekeratne, will never gain police cooperation because he is universally disliked by cops. (Note: Last week, Tillekeratne was also appointed to investigate disappearances in Colombo. If he fails to garner police assistance, it will badly hamper his ability to do the job. End note.)

¶7. (C) Suntheralingam said the HRC is too bureaucratically bogged down to accomplish any real work. He posited that the HRC will not publicize any reports that do not meet with the President's approval. Moreover, Suntheralingam said, the HRC can make recommendations to the President, but the President is under no obligation to act and may never take up the issues with Parliament. Suntheralingam also said that the current HRC is merely working on projects that were already in place, but has not taken the initiative to respond to new developments. In a separate discussion, the CPA's Fonseka concurred, called the HRC "weak" and said it has "taken a back seat to the government" on issues such

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as disappearances.

CAUSES OF THE HRC'S CRISIS OF CONFIDENCE

¶8. (U) Chairman Ramanathan's appointment and subsequent lack of leadership has undermined confidence in the HRC. Controversy arose because President Rajapaksa named him chair without referring his nomination to the Constitutional Council. In 2001, the Sri Lankan Parliament enacted the constitution's 17th amendment, requiring a Constitutional Council (CC) to appoint the heads of 7 independent national bodies, including the Human Rights Commission and National Police Commission. The amendment was designed to limit the executive's influence and provide independent oversight of the government. However, the appointment of the tenth (and final) member of the CC itself has been delayed due to confusion over the procedures and disagreement between political parties.

¶9. (U) President Rajapaksa, rather than resolving the CC issue, circumvented it and appointed a Human Rights Commissioner (Ramanathan), a National Police Commissioner, and other commissioners. The President has faced criticism from opposition political parties and NGOs alike. On July 18, a parliamentary select committee was formed to analyze the CC issue. In the meantime, the President's appointees to the national commissions remain in violation of the constitution's terms and raise questions as to the commissions' independence and efficacy as watchdog groups.

THE HUMAN RIGHTS MINISTRY'S ROLE

¶10. (U) While the HRC was set up as a statutory body to independently investigate human rights abuses, the Human Rights Ministry, established in February 2006, is an executive body charged with bringing a human rights focus to coordinating disaster relief and humanitarian assistance.

¶11. (U) Initially, the Human Rights Ministry had no separate budget or office space allocation. The Ministry now has a Minister, permanent secretary and additional secretaries, but very few working level staff and is thereby relying heavily on seconded personnel drawn from the UN. UN officials are working with the Ministry to build capacity and will conduct several three-month training sessions beginning in October.

¶12. (U) A permanent standing committee (PSC) on human rights under the Ministry's auspices is co-chaired by Human Rights Minister Mahinda Samarainghe and Foreign Minister Mangala Samaraweera. The PSC is charged with making policy decisions on human rights issues. The PSC's implementing arm is an inter-ministerial committee chaired by the Human Rights Minister.

¶13. (SBU) The UNDP's Dayaratne, currently working for the Ministry, said that the HRC had contacted the inter-ministerial committee to seek funding. The Ministry liaised with the Treasury Department to provide the HRC some money, but the Commission still faces difficulties. Dayaratne noted that the Ministry has publicly reiterated that the HRC should conduct independent investigations and does not need Ministry or government approval. Septel reports on a September 25 meeting the Ambassador had with HR Minister Samarasinghe in which the Minister candidly acknowledged the shortcomings of the HRC but refused

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any suggestion that the Human Rights Ministry take on more investigative functions, since this was the HRC's mandate.

HOW CAN THE US AND INTERNATIONAL COMMUNITY HELP
STRENGTHEN HUMAN RIGHTS CAPACITY IN SRI LANKA?

¶14. (C) The US and the international community can play an important role in helping Sri Lanka to improve its own capacity to investigate and prosecute perpetrators of human rights abuses. President Rajapaksa's invitation to international experts to work with the special Mission that is now being formed to investigate major abuses and make recommendations gives us an opening to help redress the institutional shortcomings. From post's consultations with a wide range of NGOs and experts in Colombo, the consensus is that the international community should focus on strengthening the Sri Lankan Human Rights Commission. Specifically:

a) We should urge the president to permit the Constitutional Council to function so the Council can name a new, credible, and independent head of the HRC and other independent commissions and thereby begin to regain public confidence and legitimacy;

b) We should suggest that the international monitors that participate in the Presidentially-mandated Mission make recommendations to significantly upgrade the capacity of the HRC by hiring additional staff and giving them appropriate training to be able to rapidly deploy to the scene of significant human rights incidents, conduct forensic analysis, and thoroughly

investigate all incidents. The international community must also be prepared to fund the equipment and training that will be necessary for these tasks.

c) We and other donors should work with the GSL to improve law and order and judicial capacity. Even ordinary crimes often go unresolved, and the GSL has an abysmal four percent conviction rate in the cases that do make it to court. If reported human rights abuses were properly examined by independent investigators, prosecuted by competent law enforcement officials, and punished by a fair and legitimate judiciary, such steps would go a long way to removing the culture of impunity that now exists.

d) The USG should also consider restarting the Department of Justice's International Criminal Investigative Technique Assistance Program (ICITAP) in Sri Lanka, which was very successful but abruptly cut due to DRL budget constraints. When the ICITAP program functioned in FY 2004-2005, the "Human Dignity and Ethics" course was successful, and Sri Lankan police began to incorporate some of its features into their own training programs. In addition, basic investigation courses helped shift focus from a confession-based system, which led to abuses in some cases, to a stronger law enforcement focus on gathering evidence. If greater capacity were firmly entrenched, Sri Lanka would be better able to investigate, prosecute, and punish human rights abusers.

BLAKE